

APR 28 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-37
)	
LEHIGH VALLEY COMMUNITY)	
BROADCASTERS ASSOCIATION, INC. ¹)	File No. BPED-891019MF
)	
BEACON BROADCASTING CORPORATION)	File No. BPED-900905ML
)	
For a Construction Permit for a)	
New Noncommercial Educational)	
Station on Channel 89.3 MHz at)	
Allentown, Pennsylvania)	

To: Administrative Law Judge
Joseph Chachkin

MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS ON
JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT,
MOTION FOR SUMMARY DECISION,
and
PETITION FOR LEAVE TO AMEND

1. On April 14, 1993, Lehigh Valley Community Broadcasters Association, Inc. ("Lehigh"), and Beacon Broadcasting Corporation ("Beacon") filed a Joint Motion for Approval of Settlement Agreement ("Joint Motion"). In related filings, on April 14, 1993, Lehigh submitted a Motion for Summary Decision, and on April 15, 1993, Lehigh tendered a Petition for Leave to Amend its application. The Mass Media Bureau submits the following consolidated comments.

¹ The Hearing Designation Order, DA 93-154 (released March 9, 1993) ("HDO"), inadvertently identified the applicant as "Lehigh Valley Community Broadcasters Board of Directors."

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2. The Joint Motion is accompanied by a settlement agreement which contemplates the grant of the Lehigh application, as amended, and the grant of the Beacon application, as originally filed. Lehigh proposes to amend its application by, among other things, specifying operation on Channel 201 in lieu of 207, thus removing the mutual exclusivity with Beacon. In consideration for Lehigh's agreement to amend its application, Beacon will pay Lehigh 1/2 of Lehigh's documented legitimate and prudent engineering costs, up to a total of \$2,000, associated with the preparation and filing of the amendment and any related documents.

3. Lehigh and Beacon state that the settlement agreement would serve the public interest by hastening the inauguration of two new noncommercial educational FM services in Allentown, Pennsylvania. Both applicants also declare under penalty of perjury that their respective applications were not filed for the purpose of reaching or carrying out a settlement.

4. Lehigh also seeks summary decision in its favor of a financial issue that was specified in the Hearing Designation Order, DA 93-154 (released March 9, 1993). Lehigh argues that the financial issue should not have been designated because Lehigh's application is contingent upon receipt of a grant from the National Telecommunications and Information Administration ("NTIA"). As such, according to Lehigh, its application is

grantable, subject to an appropriate condition requiring Lehigh
to report to the Commission within a reasonable time that the

in error. See Muncie Broadcasting Corp., 89 FCC 2d 123 (Rev. Bd. 1982); Midwest St. Louis, Inc., 63 FCC 2d 262 (Rev. Bd. 1976); Centreville Broadcasting, 21 RR 2d 216 (Rev. Bd. 1971).

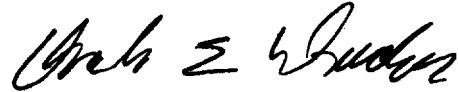
8. In the instant case, Lehigh does not claim that it is now financially qualified because it has received a grant from NTIA. Rather, Lehigh argues that the HDO erred by specifying the financial issue in the first place. Thus, although Lehigh has characterized its pleading as a motion for summary decision, it is, for all intents and purposes, a request to delete the financial issue.

9. The Bureau supports deletion of the financial issue, even though the motion was filed more than 30 days after release of the HDO. See § 1.229(b)(1) of the Commission's Rules. Pursuant to KOED, Inc., a noncommercial applicant need not show that it has obtained NTIA funding as a prerequisite to grant of a construction permit. Since Lehigh's proposal is contingent upon receipt of an NTIA grant, and the Commission has determined that the application may be granted prior to receipt of such funding, the financial issue should never have been specified against Lehigh. Accordingly, deletion of the financial issue is warranted in this instance.

10. Based on the foregoing, the Joint Motion should be granted, the settlement agreement should be approved, Lehigh's

technical amendment should be accepted, and the financial issue specified against Lehigh should be deleted. The Bureau notes that there are contingent environmental issues pending against Lehigh and Beacon. Therefore, neither application should be granted until this issue is favorably resolved.

Respectfully submitted,
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April 28, 1993

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have, on this 28th of April 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing, "Mass Media Bureau's Comments on Joint Motion for Approval of Settlement Agreement, Petition for Leave to Amend, and Motion for Summary Decision" to:

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